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John Kirlin
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RE: Summary of California Supreme Court's decision in *Silicon Valley Taxpayers Association v. Santa Clara County Open Space Authority*

Dear Mr. Kirlin:

The Delta Vision Blue Ribbon Task Force has requested a brief summary of the July 14, 2008, California Supreme Court decision in *Silicon Valley Taxpayers Association v. Santa Clara County Open Space Authority* (July 14, 2008, S136468) __ Cal.4th__ [79 Cal.Rptr. 312; 2008 WL 2717789 (Cal.).][1/] In that case, the Supreme Court invalidated an assessment for open space acquisition and maintenance imposed by the Santa Clara County Open Space Authority (OSA) because it did not comply with the special benefit and proportionality requirements of article XIIID of the California Constitution, otherwise known as Proposition 218.

Factual Summary

The Santa Clara County Open Space Authority (OSA) was created in 1992 by special State legislation. (Pub. Res. Code, § 35100 et seq.). Its jurisdiction includes all of Santa Clara County except those areas within the boundaries of the Midpeninsula Regional Open-Space District. In furtherance of its purposes to acquire and maintain open space lands in the county, the OSA has the authority to levy assessments pursuant to several different statutory provisions, including the Landscape and Lighting Act of 1972 (LLA). (Sts. & Hy. Code, § 22500

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1. The opinion in *Silicon Valley Taxpayers Association* has not yet been published in the Official Reports. For convenience, the page references in this summary are to the California Reporter, available on Westlaw and Lexis.

et seq.) Pursuant to the LLA, the OSA formed an assessment district in 1994, and beginning that same year, levied an annual special assessment on property owners in the district.

In 1996, the voters passed Proposition 218, which imposed additional procedural and substantive requirements on property assessments and tightened the definitions that distinguished between assessments and special taxes. (Cal. Const., art. XIIID, § 4, subds. (c), (d); *Silicon Valley Taxpayers Association, supra,* 79 Cal.Rptr. 312, 318.) Significantly for purposes of this legal challenge, the ballot measure "shifted traditional presumptions that had favored assessment validity." (*Ibid.*)

In 2001, the OSA Board proposed a new assessment district that included the same parcels as in the 1994 district, and sought to comply with the new Proposition 218 requirements. As with prior local government assessments, the OSA Board was required to prepare a detailed engineer's report to support the assessment. The engineer's report set the assessment for a single-family home at $20 per year, and provided a formula to assess other types of property to estimate the proportionate special benefit for each property.[2/] (*Id.* at 319.)

The returned ballots in 2001 resulted in a final weighted vote of slightly over 50% in favor of the assessment. The OSA Board approved the assessment, and the first of two court challenges was brought by the Silicon Valley Taxpayers Association as well as several others. In 2003, the OSA renewed the assessment, and added a $.34 per parcel cost-of-living increase. A second legal challenge was brought and consolidated with the first.

Lower Courts' Decisions

The trial court and Court of Appeal both upheld the OSA's assessments. Prior to the passage of Proposition 218, the courts reviewed the formation of an assessment district under a deferential abuse of discretion standard. (*Id.* at 322, citing *Knox v. City of Orland* (1992) 4 Cal.4th 132, 145-149.) The majority in the Court of Appeal decision held that "[p]roposition 218 had altered the traditionally deferential standard of review by eliminating the presumption that an assessment was valid." (*Silicon Valley Taxpayers Association, supra,* 79 Cal.Rptr. 312, 320.) Nevertheless, the majority still gave substantial deference to the OSA's legislative determination, applying a narrow review to determine whether the procedural requirements were met, and whether substantial evidence in the record supported the OSA's findings. "[A]n assessment shall not be set aside by the courts unless it clearly appears on the face of the record before the legislative body, or from facts which may be judicially noticed, that the assessment constitutes a manifest abuse of discretion." (*Id.* at 325.) Finding that the engineer's report supported the agency's decision on special benefits and proportionality, the Court of Appeal upheld the assessments.

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2. The OSA Board had previously undertaken a poll which showed that a majority of property owners in the district would support a $20 per year property tax for open space lands.

The dissenting justice in the Court of Appeal asserted that the Court should apply its independent judgment on whether the assessment complied with the requirements of Proposition 218. Applying that standard, the dissenting justice found that the engineer's report did not support the agency's determination on special benefits and proportionality. (*Id.* at 320.)

Supreme Court's Decision

In a unanimous decision, the Supreme Court agreed with the dissenting justice in the Court of Appeal on the standard of review applicable to assessments after the passage of Proposition 218. The independent judgment standard of review applied to assessments, and applying that higher standard of review, the court found that the engineer's report for the assessments did not support the OSA's decision.

In the process of arriving at this conclusion, the Court reviewed the history of the ballot measure that resulted in Proposition 218, including the court decisions following the 1978 statewide ballot measure known as Proposition 13. Proposition 13 began the process of limiting local governments' flexibility to adopt special taxes by requiring a two-thirds vote of the electorate. Subsequent case law, however, clarified that a "special assessment" is not a "special tax," and therefore did not require a two-thirds vote. (*Knox v. City of Orland, supra*, 4 Cal.4th at 141; *Silicon Valley Taxpayers Association, supra,* 79 Cal.Rptr. 312, 322.) As explained in *Apartment Assn. of Los Angeles County, Inc. v. City of Los Angeles* (2001) 24 Cal.4th 830, Proposition 218 was adopted in part to further narrow the ability of government agencies to impose assessments, so that a two-thirds vote of the electorate would be required for levies that might not have been needed absent the new Article XIIID of the Constitution. Among other things, Proposition 218, which added articles XIIC and XIIID to the California Constitution, "buttresses Proposition 13's limitations on ad valorem property taxes and special taxes by placing analogous restrictions on assessments, fees, and charges. [Citation omitted.]" (*Apartment Assn. of Los Angeles County, Inc. v. City of Los Angeles, supra,* 24 Cal.4th 836-837.)

In its opinion, the Supreme Court focused on the two key findings necessary to support an assessment, a finding of special benefit and of proportionality. As used in article XIIID, §2, subdivision (i), a special benefit is "a particular and distinct benefit over and above general benefits conferred on real property located in the district or to the public at large." The definition further provides that "[g]eneral enhancement of property value does not constitute 'special benefit.'" (Cal. Const., art. XIIID, § 2, subdivision (i).) The proportionality determination requires that "an assessment on any given parcel must be in proportion to the special benefit conferred on that parcel." (*Silicon Valley Taxpayers Association, supra,* 79 Cal.Rptr. 312, 322.) "The proportionate special benefit derived by each identified parcel shall be determined in relationship to the entirety of the capital costs of a public improvement, the maintenance and operation expenses of a public improvement, or the cost of the property-related service being provided." (Cal. Const., art. XIIID, § 4, subd. (a).) Capital cost is defined as "the cost of

acquisition, installation, construction, reconstruction, or replacement of a permanent public improvement by an agency." (Cal. Const., art. XIIID, § 2, subd. (c).)

The Supreme Court's decision established a new standard of review for property assessments based on the fact that Proposition 218 was enacted as a constitutional amendment. The substantive requirements of Proposition 218 "are contained in constitutional provisions of dignity at least equal to the constitutional separation of powers provision. (Cal. Const., art. III, § 3.) Before Proposition 218 became law, special assessment laws were generally *statutory*, and the constitutional separation of powers doctrine served as a foundation for a more deferential standard of review by the courts. But after Proposition 218 passed, an assessment's validity, including the substantive requirements, is now a constitutional question." (*Silicon Valley Taxpayers Association, supra,* 79 Cal. Rptr. 312, 326.) As a result, the courts "should exercise their independent judgment in reviewing whether assessments that local agencies impose violate article XIIID." (*Id.* at 328.)

The Supreme Court next examined the 2001 assessment against the special benefit and proportionality provisions, applying the independent standard of review. The engineer's report identified the "special benefits" that the assessment will confer on all the residents and property owners in the district, such as expanded access to recreational areas and enhanced quality of life and desirability of the area. (*Id.* at 330) The report describes the benefits as being conferred generally on all properties within the district. For example, the second listed "special benefit" of "protection of views, scenery and other resources values and environmental benefits enjoyed by residents, employees, customers and guests" is not directed to particular properties; [i]nstead, it concludes that all properties throughout the district will receive this benefit equally." (*Ibid.*) The other listed "special benefits" are similarly assigned generally to all 314,000 parcels in the district. As the opinion points out, the special benefits, if any, "would likely result from factors such as proximity, expanded or improved access to open space, or views of the open space. [Citation omitted.] But, because OSA has not identified any specific open space acquisition or planned acquisition, it cannot show any specific benefits to assessed parcels through their direct relationship to the 'locality of the improvement.'" (*Id.* at 332.)

Likewise, the Court held the engineer's report did not satisfy Proposition 218's proportionality requirement. The report "describes a program to acquire various parcels of land throughout the county," and lists a number of high priority areas. However, it does not identify any particular parcels or specific areas where the OSA plans to acquire property. Consequently, "the report fails to identify with sufficient specificity the 'permanent public improvement' that the assessment will finance, fails to estimate or calculate the cost of any such improvement, and fails to directly connect any proportionate costs of and benefits received from the 'permanent public improvement' to the specific assessed properties." (*Id.* at 334.)

Furthermore, the OSA's projected budget is based on the basic $20 amount assessed against all single-family homes, rather than on the estimation of the cost of particular public

improvements. The Supreme Court's opinion quotes from the dissent from the Court of Appeal: "'an assessment calculation that works backward by starting with an amount taxpayers are likely to pay, and then determines an annual spending budget based thereon, does not comply with the law governing assessments, either before or after Proposition 218." (*Ibid.*)

If you have any questions or would like additional information, you can contact me at (916) 322-5460.

Sincerely,

Marian G. Moe

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Deputy Attorney General

For EDMUND G. BROWN JR.
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